IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NOS.1047, 1048, 1051 TO 1054, 1056 TO 1069, 1071 TO 1073, 1075, 1076, 1080 TO 1096, 1098 TO 1104, 1106, 1107, 1109 TO 1116 OF 1989.

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SPL LAND ACQUISITION OFFICER

Versus

BHATT MULSHANKAR MAGANLAL

Appearance:

MR S.J. DAVE, AGP in First Appeal NOS.1047, 1048, 1051 TO 1054, 1056 TO 1069, 1071 to 1073, 1075, 1076, 1080 to 1983 of 1989.

MS HARSHA DEVANI, AGP in First Appeal Nos. 1084 TO 1096, 1098 to 1104 1106, 1107, 1109 TO 1116 OF 1989.

MR M.R. SHAH for the respondents.

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 30/03/98

COMMON ORAL JUDGEMENT (Per Y.B. Bhatt J.)

1. These are appeals filed by the State of Gujarat under section 54 of the Land acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the Reference Court under section 18 of the said Act.

2. The pertinent facts, in brief, which are not disputed or undisputable are as under:

2.1 The lands under acquisition were acquired for the Kojan Reservoir Scheme, and are located in the village Pipalia, Taluka Himmatnagar, District Sabarkanta. The relevant notification under section 4 is dated 6th May 1982, the award was declared by the Land Acquisition Officer under section 11 of the said Act on 1st November 1986, whereas the possession of the acquired land had been taken earlier on 1st November 1980.

2.2 The Land Acquisition Officer in his award categorised the acquired lands under four categories viz. (1) irrigated lands (Bagayat lands), (2) non-irrigated lands (Jirayat lands), (3) Inferior type non-irrigated (Inferior Jirayat lands) and (4) Kharaba lands.

2.3 The claimants-land holders being aggrieved by the said award and not having accepted the same, preferred References under section 18 which were heard and decided by the Reference Court. The Reference Court classified the lands only under three categories i.e. categories 1 to 3 stated hereinabove and eliminated the 4th category. The Reference Court determined the market value of the acquired lands as under:

1. Rs.660/- per Are for irrigated lands (Bagayat lands.

2. Rs.420/- per Are for Jirayat lands.

3. Rs.300/- per Are for Inferior Jirayat lands.

2.4 The appellant-State of Gujarat has preferred these appeals for reduction of the compensation awarded in respect of those lands at the hands of the Reference Court and also for other incidentals.

3. We have heard the learned counsel for the respective parties on merits, and with their assistance we have carefully scrutinised the impugned judgements and have referred to such relevant evidence as the learned counsel for the respective parties thought necessary.

4. At the outset we may state, with some reluctance, but with no hesitation at all, that the judgement and awards of the Reference Court leave much to be desired. No doubt, the Reference Court has taken into account and has also noted the oral as also the documentary evidence led by the respective parties, but unfortunately we are not in a position to state that the ultimate determination of the market value arrived at by the Reference Court is in fact based, strictly speaking, upon the evidence on record. We may, however, also take note of the fact that not much blame is attributable to the Reference Court. In fact the state of evidence on record is such that even if we had to decide the Reference Cases on such material as is available on record, it would have been a difficult task indeed. As rightly observed by the reference Court, the evidence led by the claimants as regards the yield of crops and the net annual agricultural yield, for the purpose of applying the capitalisation method, leaves much to be desired. The oral evidence led by the claimants is definitely not of the category which would inspire much confidence. On the other hand the documentary evidence on record for the purpose of determination of the market value by comparing the same with comparable sale instances, also does not enable the court to arrive at any reasonable conclusion as to the appropriate and reasonably correct market value on the relevant date viz., the date of the notification under section 4. It is under these circumstances that the Reference Court was perhaps compelled, looking to the very peculiar nature of the evidence on record, constrained to enter the realm of conjecture and estimation, which in our opinion would fall outside the normal parameters of guess work normally permissible in land acquisition matters under the said Act.

5. Under these circumstances we would normally and on a prima facie basis be inclined to remand the matter back to the Reference Court for determination of the market value, with liberty to both sides to lead more specific and appropriate evidence. However, we are conscious that if we were to adopt this course, it would mean a delay of number of years. We are also conscious of the fact that even the compensation in fact awarded by the Reference Court is not entirely given to the original land holders, since one half of the same is invested in

fixed deposit with a nationalised bank under interim orders of this court passed at the admission stage of these appeals.

6. Our attention has also been drawn to the decision of the Supreme Court in the case of K. Krishna Reddy, reported in AIR 1988 SC 2123. In the said decision and particularly in paragraphs 11 and 12 thereof, the Supreme Court has emphasised the need to avoid passing orders of remand in land acquisition matters at the appellate stage, for obvious reasons. It is under these circumstances that we have undertaken upon ourselves to determine the market value of lands under acquisition inspite of unsatisfactory evidence on record.

7. We have undertaken this process by appreciating such evidence as is available on record, and by inviting suggestions from both the learned counsel for the respective parties as to what would be a fair and reasonable market value of the acquired lands, so that we may apply our minds independently to such suggestions, albeit always with an eye on whatever evidence is available on record.

8. As a result of this give and take process, we have applied our minds both to the suggestions we have received from the respective counsels of the two sides, and we have applied our minds thereto in the light of whatever evidence we have found on the record of the case. Since we have undertaken this process under the peculiar and unusual circumstances, we appreciate the fairness of the respective counsels for both sides when they stated that they would accept such market value as we may determine, without requiring reasons for the same.

9. Under these circumstances we determine the market value of the acquired lands, while maintaining the three categories as determined by the Reference Court, as under:

(a) The market value for Bagayat lands shall be Rs.480/- per Are,

(b) The market value for Jirayat lands shall be Rs.300/- per Are, and

(c) The market value for Inferior Jirayat lands shall be Rs.215/- per Are.

We hold and direct accordingly.

10. Another contention on principle we are required to consider arises on a submission made by the learned counsel for the appellant-State. In this context he has contended that by now it is well settled that where irrigated lands have been valued as such on account of the existence of irrigation facilities available to the land specifically due to the existence of a well upon and land itself, the value of the well is in fact reflected in the higher market value of such irrigated land, and therefore, no separate compensation can be awarded for the well in question. This principle flows from the decision of the Supreme Court in the case of State of Bihar, reported at 1996 (10) SCC page 635, following an earlier decision of the Supreme court in the case of O. Janardan Reddy, reported at 1994 (6) SCC page 456.

11. There cannot be any controversy as to the principle laid down by the Supreme Court. However, when this principle is sought to be applied to the facts of the present case, we find that there are only three survey numbers, whose market value has been determined on the basis that they are Bagayat lands due to irrigation facility available to the lands due to the presence of well on the land itself. These three survey numbers are as under:

(i) Survey No.306 (Land Reference Case No.517/87)

(ii) Survey No.327 (Land Reference Case No.524/87)

(iii) Survey No.319 (Land Reference Case No.527/87)

12. However, when the aforesaid principle is in fact brought to bear upon the facts pertinent to these three survey numbers, another incongruity comes to the forefront, which is best explained by stating the appropriate figures. In respect of survey No.306 it is found that the Reference Court has awarded Rs.20,000/for the well, whereas the market value of the land is Rs.66,000/-. Survey No.327 has a well valued at Rs.20,000/- as against the market value of the land at Rs.93,000/-. Survey No.319 has a well valued at Rs.20,000/- as against the market value of the land itself is Rs.2,27,000/-. While examining these figures in justxaposition, we are of the opinion that the higher valuation put upon these lands as irrigated lands is not entirely reflected in the figures looking to the value of the well itself. In other words, in our opinion, the value of the well is disproportionately high in relation to the superior value of the irrigated land in question.

13. In this context it may also be noted that each of the three wells in the three survey numbers under consideration has been valued by the Reference Court at Rs.20,000/-, after noting the fact that at least the prima facie evidence on record and as per the case put forward by the claimant, the well in survey No.306 is valued at Rs.70,700, the one in survey No.327 is valued at Rs.57,160/- and the well in survey No.310 is valued at Rs.63,000/-. Thus when we observe the disproportionate aspect of the valuation of the well in relation to the total market value of the acquired land, the claim/evidence from the perspective of the claimant would make the value of the well even more grossly disproportionate to the total value of the land. However, since we cannot legitimately devalue the land or give any smaller compensation for this intrinsic market value on account of its being irrigated land, what we can do is to attribute a smaller value to the well which contributes to the higher valuation of the land as irrigated land. Under the circumstances we hold and direct that the well in survey No.306 (Land Reference Case No.517/87) shall be valued at Rs.10,000/- as also the well in survey No.327 (Land Reference Case No.524/87) shall be valued at Rs.10,000/-. As against this, the well in survey No.319 (Land Reference Case No.527/87), which has been valued at Rs.20,000/- by the Reference Court does reflect the higher market value of the acquired land, which is quantified at Rs.2,27,000/-. Thus, there is no justification, at least in the case of this particular well, for awarding any separate or independent compensation for the well. This amount of Rs.20,000/will, therefore, have to be deducted from the total compensation payable to the claimant in Land Reference Case No.527/87. We order accordingly.

14. No other point has been urged.

15. Accordingly these appeals are required to be partly allowed as discussed hereinabove, and we order accordingly. No order as to costs. Decree accordingly.

16. At this juncture we may also direct, as a consequence of the aforesaid decree, that the Reference Court need not wait for the maturity date of the deposit directed to be made under the interim orders of this court, and that the respondents in these appeals may be permitted to withdraw the necessary amounts of the maturity value and/or discounted value of the fixed deposits (inclusive of accrued interest), to the extent such amount is in excess of the amount due and payable to such land holders under each present decree. In other

words, the aggregate amount of the deposit together with interest (on encashment) may be adjusted against the present decree and the excess amount may be handed over to the original claimants.

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